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The Role of Lawyers in Social Change: China

*Shen Zongling**

The law in China today is quite different from that of Western countries, since China's social system, ideologies, historical, and cultural traditions are distinctive. However, in terms of structure and terminology, Chinese law resembles the Civil or Continental tradition. In the early 1950s Chinese law and the legal profession was modeled on the former Soviet Union, but this influence has declined since the late 1950s.

One of the main differences between China's legal profession and that of the West deals with social status. Members of the Chinese legal profession are like ordinary state officials. As a group, the Chinese legal profession lacks the influence that exists in Western countries. This phenomenon is the product of historical conditions.

At the same time, it should be emphasized that in the past twelve years the role played by the legal profession has been greatly enhanced. For the past forty-two years since the founding of the new People's Republic, China has undergone a tortuous process of development. In 1978, China entered a new period of development: concentrating on socialist modernization, adhering to reform and open policy, and building democracy and the legal system. Over the past twelve years, the significance of law in social life has been recognized, a series of laws and regulations have been enacted, judicial organs have been strengthened and restored, including the lawyer system, all the law schools were reopened, and a number of new law schools have been established.

In China, the expression "legal profession" might include all who perform some measure of legal work. However, this expression usually refers only to the following four groups: judges, procurators, lawyers, law teachers, and researchers. Generally speaking, these four groups enjoy equal position. No institutional barriers to horizontal mobility exist. A law teacher or a lawyer may later choose to become a judge or a procurator or vice versa.

The legal profession in China has made considerable progress. However, difficulties and obstacles remain. For example, a large contingent of trained legal personnel is needed.

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I. JUDGES

Judicial powers are exercised by the people's courts in China. Courts are not divided between regular courts and administrative courts or between criminal courts and civil courts. The people's courts are composed of the Supreme Court, the local courts at different levels, military courts, and other special courts (e.g., maritime courts, railway courts). The local courts are divided into three levels: high court, intermediate courts, and basic courts. The Supreme Court supervises the administration of justice of all other courts, while courts at higher levels supervise the administration of justice by courts at lower levels.

Within the courts, four main divisions exist: civil, criminal, economic, and administrative; likewise four types of judges preside: president and vice president, chief judges and associate chief judges of divisions, judges, and assistant judges. In 1987, statistics included:

Supreme Court	1
(jurisdiction over the country)	
Higher Court	31
(corresponding province)	
Intermediate Court	365
(corresponding prefectural area)	
Basic Court	3007
(corresponding county)	
President and vice president	10,217
Judges	137,066
(including chief judge, associate chief judge, and assistant judge) ¹	

In contrast with other countries, judges in China are selected fundamentally on the basis of appointment instead of election, only the presidents at different levels (including the Supreme Court) are elected or removed by the corresponding congresses. The vice president, judges, or members of the judicial committee of the court are all appointed or removed by the corresponding standing committee of the congress at the suggestion of the president of the relevant court.

According to law, citizens who have the right to vote, stand for election, and have reached the age of twenty-three are eligible to be elected or appointed to people's courts or as judges of divisions. Persons

¹ LAW YEAR BOOK OF CHINA, 1987.

deprived of political rights are excluded from eligibility. Also, judicial personnel of the people's courts must possess an adequate knowledge of the law. The term of office of presidents of people's courts at all levels parallels people's congresses at different levels. The president of the Supreme People's Court may serve no more than two consecutive terms. All other judges serve until retirement or transfer to another post.

According to the revision of the Organic Law of the People's Court (1983), courts adopted the collegial system in the administration of justice. Cases of first instance in the courts are tried by a collegial panel of judges or a combination of judges and people's assessors. Simple civil cases, minor criminal cases, and cases otherwise provided for by law may be tried by a single judge, which means jurors may or may not be present in the adjudication.

Since the end of 1978, changes in China's judicial field have occurred. The number of cases have been constantly increasing. From 1986 to 1990, the number of cases of first instance in the courts were:

	1986	1987	1988	1989	1990
Criminal:	299,720	289,614	313,306	392,564	459,656
Civil:	989,409	1,213,219	1,455,130	1,815,385	1,851,897
Economic:	322,153	367,156	513,615	690,705	588,143
Administrative:	-	-	8,573	9,934	13,006 ²

In contrast with the juror system, the conciliation system has always prevailed in China. It has been historical tradition in Chinese society since the founding of the People's Republic. In accordance with law, in conducting civil proceedings, the courts stress conciliation; if conciliation efforts are ineffective, the courts render judgements. In addition to conciliation by the court itself, conciliation by committee is available. In fact, most civil disputes are settled outside the court, through conciliation by the committee. These committees are not official organs, but ordinary social organizations. Litigation may be initiated where conciliation is refused or has failed. If a conciliation committee violates law, the court corrects the violation.

² LAW YEAR BOOK OF CHINA, 1987-1990; The report was delivered by Ren Jian-xin, the President of the Supreme People's Court at the 4th session of the 7th NPC, April 3, 1991.

II. PROCURATORS

China's procuratorates are state organs for legal supervision, established at four levels corresponding to the courts as well as special procuratorates. The Supreme Procuratorate exercises leadership over local and special procuratorates at various levels and the procuratorates at higher levels exercise leadership over the work of those at lower levels.

Within the procuratorates, three types of procurators exist: chief and deputy chief procurator (the leading officials of the Supreme Procuratorate are called Procurator-General and Deputy Procurator-General), procurator, and assistant procurator. In 1988, there were:

Supreme Procuratorate	1
Province Procuratorates	30
Prefectural Procuratorates	370
County Procuratorates	2,970
Branch Organs	116
Chief and deputy procurators	10,122
Procurators	59,330
Assistant procurators	33,996 ³

The qualification and terms of the procurators are substantially similar to that of judges. Chief procurators at all levels are elected and removed by the corresponding congresses, all other procurators are appointed and removed by the corresponding standing committees of the congresses upon the chief procurator's recommendation.

On the surface, the organization and function of the Chinese procuratorate and that of Russia are similar, but important differences exist. For example, China's procuratorates are employed to conduct public prosecution in criminal cases and supervise the activities of public security organs and courts, while the procuratorates in Russia extend supervision over the lower and intermediate executive organs. In addition, the Russian procuratorate is a highly centralized organization, free from all interference from local authorities, while all the local procuratorates in China are subject to the principle of "double subordination," responsible to both the corresponding congress and its standing committee, and their superior procuratorates.

³ LAW YEAR BOOK OF CHINA, 1988.

III. LAWYERS

The term lawyer refers only to those enrolled as legal practitioner or attorney-at-law and excludes judges, law teachers, and others. Legal practice is undifferentiated in China today. China's lawyer system has gone through a tortuous process of development since 1949. This system was abolished immediately after the founding of The People's Republic of China. It was reestablished in the middle of the 1950s, with the adoption of the Constitution of 1954. At that time, there were only 2,000 lawyers (including part-time lawyers). However, in 1957, the lawyer system was abolished once again. Lawyers were prohibited until the end of 1979. Since then this system has developed rapidly.

Under the Interim Regulation on Lawyers enacted in 1980, the Chinese lawyer system is characterized by lawyers falling within the rank of "state legal worker." Their task is to give legal assistance to state organs, enterprises, institutions, and citizens in order to ensure the correct implementation of the law, protect the interests of the state and collectives, as well as citizens' rights and interests. The main functions of lawyers are: to serve as defense counsel in criminal cases, to represent parties in civil or administrative cases, to serve as legal adviser of state organs, enterprises, and individuals, to answer legal inquiries, and to draft documents. Law school graduates who have more than two years experience in legal work, and those who have served as judges and procurators, are qualified to apply for the post of lawyer. Since 1986, those who apply for this post must take the examination prescribed by the Ministry of Judicial Administration.

Every lawyer must be a member of a legal advisory office (law firm in a certain sense) under the leadership and supervision of the judicial administrative organs of the state. Under present law, lawyers may not practice law privately.

Progress of economic and political reforms make reform of the legal system increasingly unavoidable. A new regulation for lawyers has been drafted to replace the old one. The legal statute of lawyers will be changed to some extent. It may be appropriate to develop diverse systems of lawyers, provided the co-operative system of lawyers remains the principal form. A small number of lawyers would remain as "state legal workers," but most lawyers would join co-operative law firms. These firms would be able to voluntarily establish themselves and take full responsibility for their own profits and losses. However, the firms would be neither a "partnership" nor a professional corporation. Additionally the firms would remain under administrative control. The principle of such reforms is to improve the status and income of lawyers, giving them more opportunities to display enthusiasm and creativity. It

is also believed that through these reforms the number of lawyers would be greatly increased. In 1989, there were 3,653 legal advisory offices and 43,533 lawyers (including 23,766 full-time lawyers and 19,767 part-time lawyers).⁴

IV. LAW TEACHERS AND RESEARCH PERSONNEL

Diverse forms of legal education exist in China. The main form is the law department or law school of university or college. In 1987-1988, there were seventy-two law departments or law schools with 30,127 enrolled students and 3,734 law teachers (including 119 professors, 612 associate professors, 1,052 lecturers and 1,951 assistants).⁵

Generally speaking, law teachers devote themselves to teaching and research. In addition, some serve as part-time lawyers and take part in legislative drafting.

Like most law departments in civil law countries, China's legal education is offered at the undergraduate level. Law department courses blend teaching of legal subjects with humanities and the teaching of law is at a more theoretical level than case law study.

⁴ LAWYER YEAR BOOK OF CHINA, 1990 & 1988.

⁵ *Id.*